

(2000) 04 CAL CK 0025

Calcutta High Court

Case No: C.R. No. 862 of 1988

Amarendra Nath Das

APPELLANT

Vs

Dhiraj Bhattacharjee

RESPONDENT

Date of Decision: April 27, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 245(2), 468(1), 469
- Penal Code, 1860 (IPC) - Section 120B, 379, 411

Citation: (2001) 2 CALLT 92

Hon'ble Judges: Debiprasad Sengupta, J

Bench: Single Bench

Advocate: Balai Chandra Roy, Subrata Bose and Y. Dastoor, for the Appellant; D.K. Dutta, Partha Sarathi Bose and S. Sil, for the Respondent

Final Decision: Allowed

Judgement

Debiprasad Sengupta, J.

This is an application for quashing of a proceeding being complaint Case No. C.H. 205/1985 under sections 379/ 120B of the Indian Penal Code pending in the Court of learned Chief Judicial Magistrate, Jalpaiguri.

2. It appears that Nagracata police station case No. 8 dated 26.12.70 under sections 379/411/120B of the Indian Penal Code was registered on the basis of a suo motu. complaint lodged by Sub-Inspector Dalbahadur Chetry, Officer-in-charge Nagracata police station. In the First Information Report it was alleged that on receipt of a secret information that some persons from Siliguri area would unscrew the valve near Diana bridge and steal oil from the Indian Oil Pipeline, the complainant along with force left for working out the said information. While proceeding to Diana bridge they found a black flat car bearing No. WBG 3382 going in high speed in the opposite direction. The police party proceeded further and at 21.30 hours they found a tanker bearing No. WGV 4282 proceeding towards Siliguri. They chased the

said tanker and Intercepted the same. The tanker was found to be full with diesel oil. On demand the driver could not produce any valid document for the possession of the said 10,000 litres of diesel oil. On interrogation the driver disclosed that the diesel oil was extracted from the pipe line near Diana bridge. They also disclosed that their employer Amarendra Nath Das, Santosh Kumar Das, S.K. Routh Roy, and Officer of Indian Oil Corporation helped to extract the said oil from the pipe line and the said persons proceeded towards Siliguri in a black Fiat car bearing No. WBG 3328. About half an hour thereafter a black Fiat car came there and the aforesaid three persons were found inside the said car. On being challenge the said persons disclosed that the oil belonged to Amarendra Nath Das of Sevoke Service Station. However, they could not produce any valid documents in support of such possession of oil. On search some equipments for extracting oil were also recovered from inside the driver's cabin of the said tanker.

3. On 8.10.72 on completion of investigation of the case a charge sheet was submitted against 5 accused persons under sections 379/411/120B of the Indian Penal Code.

4. It appears that for non supply copies of documents relied upon by the prosecution a revisional application being Criminal Revision No. 15 of 1975 was moved in this Court. By an order dated 26.11.77 this Court directed the learned Court below to see that copies of all such documents which are mentioned in the chargesheet are supplied to the accused persons. But inspite of several orders and reminders by the learned Sub-Divisional Judicial Magistrate Jalpaiguri copies of documents in question were not supplied to the accused persons and as such they filed an application u/s 245(2) of the Code of Criminal Procedure praying for discharge. The said application u/s 245(2) Cr. PC was rejected by the learned Magistrate by an order dated 26.3.82. Against the said order of rejection the petitioner preferred a revisional application before this Court praying for quashing of the said proceeding and by an order dated 9.7.82 this Court allowed the application and discharge the petitioner from his ball bond.

5. On 28.1.83 the petitioner filed an application before the learned Magistrate praying for return of the articles seized by Nagracata police station in connection with the said case. By an order dated 3.8.83 the said prayer for return was allowed. Thereafter by a Memo bearing No. 1523 dated 4.9.83 Officer-in-Charge Nagracata police station communicated the aforesaid order of return passed by the learned Magistrate to the Assistant Engineer, Pipeline Division, I.O.C., Siliguri and requested him to return to the petitioner 10,000 litres of H.S.D.

6. Thereafter on 6.4.85 the present opposite party, namely, Dhiraj Bhattacharjee, Senior Pipeline Engineer, IOC Bhaktinagar lodged in the Court of the learned Chief Judicial Magistrate, Jalpaiguri a petition of complaint against the petitioner and 4 others alleging commission of offence under sections 379/120B of the Indian Penal Code.

7. Mr. Balai Chandra Roy, the learned Advocate appearing for the petitioner submits that from a perusal of the petition of complaint it appears that the allegations made in the said petition of complaint are the same as it was in the previous police case registered with Nagrakata P.S. It is the further submission of Mr. Roy that such complaint was lodged with the learned Magistrate after a lapse of considerable period of time only for the purpose of frustrating the order of return passed by the learned Magistrate. Mr. Roy further submits that the cognizance taken by the learned Magistrate on the basis of the petition of complaint is absolutely bad in law as the said cognizance was taken beyond the statutory period of limitation as prescribed u/s 468 of the Code of Criminal Procedure. Mr. Roy submits that the offence u/s 379 IPC is punishable with Imprisonment for three years. So according to the provision of Section 468(l)(c) of the Code of Criminal Procedure the period of limitation for taking cognizance of offence has been provided as three years. According to Mr. Roy in view of the provision of Section 469 of the Code of Criminal Procedure such limitation is to be calculated from the first day on which such offence comes to the knowledge of the complainant.

8. Mr. Dilip Dutta, the learned Advocate appearing for the opposite party submits that the cognizance taken by the learned Magistrate is not illegal inasmuch as the complainant did not have any knowledge about the result of the police case. He further submits that in the application for return of the seized goods he was not made a party and so he did not have any knowledge of any proceeding before the learned Magistrate or any order passed by the learned Magistrate in connection with the said case.

9. I have carefully gone through the lower Court records and also the relevant papers which are annexed to the revisional application. I am unable to accept such argument made by Mr. Dutta. It appears that by a Memo dated 4.9.83 the complainant was intimated by the Officer-in-charge of Nagrakata police station about the order of return of seized goods passed by the learned Magistrate and he was requested to return the seized goods to the petitioner. So on 4.9.83 it was within the knowledge of the complainant that an order was passed by the learned Magistrate regarding return of the seized oil. But he remained silent for about two years and thereafter lodged a complaint on 6.4.85. It also appears that although the petition of complaint was filed on 6.4.85 the same was kept pending till 10.3.88 and the cognizance of the offence was taken by the learned Magistrate on 10.3.88 although there was no reason for the learned Magistrate to keep it pending for about three years. So if the date of knowledge is taken to be on 4.9.83 the cognizance dated 10.3.88 must be beyond time.

I have heard the learned Advocates of both the parties and I have also perused the lower Court records. The present case relates to an offence which took place in the year 1970, For the last 30 years the petitioner has suffered mental agony to a considerable extent and after such long period of 30 years it will not be wise to allow

the proceeding to be continued any further. In my considered opinion this is a fit case which warrants interference by this Court. Accordingly the revisional application succeeds and the same is allowed. The impugned proceeding being complaint case No. C.R. 205/1985 u/s 379/120B of the Indian Penal Code is hereby quashed.